United Nations CRPD/C/20/D/35/2016

Convention on the Rights of Persons with Disabilities

Distr.: General
20 December 2018

Original: English

Committee on the Rights of Persons with Disabilities

Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 35/2016*, **

Communication submitted by:	J.H. (represented by counsel, Michele Hardesty-Munday)
Alleged victim:	The author
State party:	Australia
Date of communication:	12 February 2016 (initial submission)
Document references:	Decision taken pursuant to rule 70 of the Committee's rules of procedure, transmitted to the State party on 18 March 2016 (not issued in document form)
Date of adoption of views:	31 August 2018
Subject matter:	Performance of jury duty by deaf persons
Procedural issue:	Substantiation of claims
Substantive issues:	Equality and non-discrimination; reasonable accommodation; equal recognition before the law; freedom of expression
Articles of the Convention:	5 (2) and (3), 12 (2) and (3) and 21 (b) and (e)
Article of the Optional Protocol:	2 (d) and (e)

1. The author of the communication, dated 12 February 2016, is J.H.,[1] a national of Australia, born on 17 August 1977. She claims to be a victim of violations by the State party of articles 5, 12 and 21 of the Convention. The State party acceded to the Optional Protocol on 21 August 2009. The author is represented by counsel, Michele Hardesty-Munday.

* Adopted by the Committee at its twentieth session (27 August–21 September 2018).

** The following members of the Committee participated in the examination of the communication: Ahmad Al-Saif, Monthian Buntan, Imed Eddine Chaker, Theresia Degener, Jun Ishikawa, Samuel Njuguna Kabue, Kim Hyung Shik, Stig Langvad, Robert George Martin, Martin Babu Mwesigwa, Coomaravel Pyaneandee, Jonas Ruskus, Damjan Tatic and You Liang.

[1] The author of the communication has requested anonymity.

GE.18-22328(E)

1822328

Please recycle

A. Summary of the information and arguments submitted by the parties

The facts as presented by the author

2.1 The author is an Australian citizen who was born deaf and uses Australian Sign Language (Auslan) as her native language. Between April and May 2014, the author was summoned by the Department of the Attorney General in Perth to attend jury service in Western Australia District Court on 3 June 2014. On 6 May 2014, the author informed the Department of the Attorney General of her circumstances and that she required an Auslan interpreter to enable her to perform her jury duty. She also informed the jury services that Auslan interpreters could be booked through Sign Language Communications Western Australia at the Western Australia Deaf Society.

2.2 On 15 May 2014, the manager of jury services at the Department of the Attorney General contacted the author to ask whether she required the assistance of an Auslan interpreter or a suitable hearing aid device. On the same day, the author responded that she would require an Auslan interpreter as she did not wear any technological hearing device.

2.3 In Western Australia, jurors are selected randomly from the electoral roll maintained by the Western Australian Electoral Commission. Approximately 12 to 18 people are chosen, who are then sworn as jurors to try the issue of facts and return a verdict in criminal trials. The author states that jury duty is everyone's civic responsibility and an important part of the administration of justice in Australia.

2.4 On 16 May 2014, the manager informed the author that she would be excused from the summons to serve as a juror, under section 34G of the Juries Act 1957 of Western Australia.[2] The manager stated that given the requirements of the Juries Act and the overriding necessity to afford a fair trial to the accused, including the preservation of the secrecy of jury deliberations, the court was unable to provide the author with the necessary means to enable her to serve effectively as a juror.

2.5 On 20 May 2014, the author responded to the email, raising concerns about the domestic authorities' decision to excuse her. The author noted that the manager had previously asked whether she could use technological hearing devices or if she had required an Auslan interpreter. She noted that the use of technological hearing devices could inadvertently lead to the filtering and omission of information. She also referred to section 34G (2) (e) of the Juries Act and noted that it was clear from their written communication that she had no problem understanding English and could not be excused under that provision. On 27 May 2014, the author sent an additional follow-up email to the manager. She noted that under the Western Australia Language Services Policy, state agencies, including district courts, were required to provide interpreters.

2.6 On the same day, the manager responded via email, stating that his decision was not related to financial impediments, and that he did not consider the author to be a burden on the court system. He stated that the main rationale of his decision was to provide a system that was fair to the accused and complied with the applicable legislation.

2.7 In February 2015, the author lodged a complaint, under sections 66A and 66K of the Equal Opportunity Act 1984 of Western Australia, with the state's Equal Opportunity Commission. The Commission found that the Department of the Attorney General, in its exercise of a statutory duty, was acting directly as an arm of the government rather than as a provider of a service to the community and that the complaint therefore fell outside the scope of the Equal Opportunity Act. As the Commission did not consider the merits of the complaint, the author's case could not be referred to the State Administration Tribunal under the Equal Opportunity Act.[3] As the decision did not constitute an error of law, no appeal could be made to the Supreme Court. In that regard, the author notes that section 69

[2] Under section 34G (2) (e) and (f), on general powers to excuse summoned people, if a judge or the summoning officer is satisfied that a person who is summoned does not understand spoken or written English, or cannot speak English, well enough to be capable of serving effectively as a juror, or is not capable of serving effectively as a juror because he or she has a physical disability or a mental impairment, the judge or summoning officer must excuse the person from the summons.

[3] High Court of Australia, *J.W. v. City of Perth*, Judgment, 31 July 1997.

of the Equal Opportunity Act provides that nothing in that Act renders unlawful anything done by a person if it was necessary for the person to do it in order to comply with a requirement of any other Act which is in force when this section comes into operation. The decision of the Department of the Attorney General was therefore made in compliance with the Juries Act and the Equal Opportunity Act.

2.8 The author intended to lodge a complaint under the Disability Discrimination Act 1992. However, under section 47 (2) of that Act, anything done by a person in direct compliance with a prescribed law is not rendered unlawful by the provisions of the Act. This domestic remedy would therefore also have been ineffective in addressing the author's complaint.

2.9 On 24 April 2015, the author wrote to the Attorney General, who replied on 15 May 2015 stating that in some circumstances, an individual might be unable to properly discharge the duties of a juror and that the decision of the manager was correct.

The complaint

3.1. The author submits that the State party has violated article 5 (2) and (3) of the Convention by failing to provide reasonable accommodation to prevent discrimination against her on the basis of her hearing impairment. The author argues that the provision of an Auslan interpreter to enable her to complete her jury duty is not a disproportionate or undue burden. The author further claims that although hearing loop devices have been installed in courtrooms to assist individuals with hearing impairments, these alone are not a means of complete access. Persons with hearing impairments will still have to rely on a combination of lip-reading, captioning and written notes to gain a complete understanding, and thus such devices do not represent fully adequate accommodation for persons with hearing impairments.

3.2 The author submits that the State party has violated article 12 (2) and (3) of the Convention by failing to take appropriate measures to provide her with the support that she requires to perform her jury duty. The author claims that her right to enjoy legal capacity on an equal basis with others in all aspects of life includes the entitlement to form part of a jury panel. She argues that the State party's failure to provide an Auslan interpreter and the fact that it excused her from jury duty without considering her individual circumstances amounts to the implementation of a blanket approach to the issue by the domestic authorities.

3.3 The author submits that article 21 of the Convention, ensuring her right to the freedom of expression and opinion, has been violated given that she was prevented from taking part in the jury panel following the State party's failure to provide an Auslan interpreter.

State party's observations on admissibility and the merits

4.1 On 24 October 2016, the State party submitted its observations on the admissibility and merits of the communication. It considers that the author's claims under article 12 of the Convention should be held inadmissible *ratione materiae* or, alternatively, on the basis of being manifestly ill-founded and not sufficiently substantiated in accordance with article 2 (e) of the Optional Protocol. Further, the State party submits that the author's claims under articles 5, 12 and 21 of the Convention are without merit.

4.2 The State party accepts the general facts as stated by the author, though it rejects the author's characterization of the jury panel's composition, assertion that jury duty is everyone's civic responsibility and claim that the Department of the Attorney General took a blanket approach to her circumstances. In that connection, it recalls that under the Juries Act, between 12 and 18 jurors are be chosen to be empanelled in a jury for a criminal trial.[4] However, if there are more than 12 jurors immediately before the jury is asked to retire to consider its verdict in a criminal trial, a ballot is conducted to select 11 jurors to retire with

[4] Juries Act 1957 of Western Australia, section 18 (1) and (2).

the foreperson to consider the verdict.[5] The remaining jurors not selected through the ballot are then discharged from further service as a juror for that trial.[6] A total of only 12 jurors is therefore able to consider and return a verdict.

4.3 The State party contends that the Department of the Attorney General did not take a blanket approach in excusing the author from jury duty, but considered her individual circumstances and enquired into her assistance requirements. Based on the information provided by the author, the manager concluded that she was not capable of serving effectively as a juror in accordance with section 34G (2) of the Juries Act.

4.4 The State party further submits that the author's claims under article 12 of the Convention are inadmissible *ratione materiae*, as jury duty does not represent a manifestation of legal capacity. The nature of article 12 of the Convention is such that no new rights are established; instead, the article contains a description of the specific elements that States parties are required to take into account to ensure the right to equality before the law for people with disabilities, on an equal basis with others.[7] This position is supported by the *travaux préparatoires* of the Convention.[8] The State party also notes that the phrase "legal capacity" has a defined scope and meaning. It includes the capacity to be both a holder of rights and an actor under the law: legal capacity to be a holder of rights entitles a person to full protection of his or her rights by the legal system, and legal capacity to act under the law recognizes that person as an agent with the power to engage in transactions and to create, modify or end legal relationships.[9] The concept can be additionally construed as a person's legal standing, to hold rights and be recognized as a legal person before the law, and as a person's legal agency, to act on those rights and have those actions legally recognized.[10] Article 12 is therefore concerned with enumerating the elements of legal personality rather than enumerating elements of the interaction with the judicial process. Although article 12 (5) was not specifically raised by the author, its content demonstrates that the scope of legal capacity under article 12 mainly focuses on financial and economic affairs.[11] The State party therefore asserts that there is no evidence to suggest that the manager's decision related to the legal capacity of the author. Consequently, the State party considers that the performance of jury duty does not fall within the scope of article 12 of the Convention and that the author's claim in that regard should be held inadmissible.

4.5 Alternatively, the State party claims that the author's allegations under article 12 of the Convention are manifestly ill-founded and not sufficiently substantiated. The State party recalls that a "claim" is not just an allegation, but an allegation supported by substantiating material.[12] The State party submits that the manager did not at any time question the author's legal capacity. Instead, he made his decision by considering the overriding necessity to afford a fair trial to the accused, including the preservation of the secrecy of jury deliberations. Further, when communicating to the author his decision to excuse her from jury duty, the manager stated that "unfortunately the court is unable to provide the necessary means of enabling you to serve effectively as a juror". The author did not provide any evidence to substantiate her claims under article 12 of the Convention, and the claims should therefore be considered inadmissible under article 2 (c) of the Optional Protocol.

4.6 The State party submits that the relevant domestic law establishes a legitimate differential treatment of people who require an interpreter and thus is not discriminatory under article 5 (2) of the Convention. It acknowledges that article 5 prohibits both direct

[5] Ibid., section 18 (4).

[6] Ibid., section 18 (6).

[7] General comment No. 1 (2014) on equal recognition before the law, para. 1.

[8] See the daily summaries of discussions of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities at its fifth session (available at www.un.org/esa/socdev/enable/rights/ahc5.htm).

[9] General comment No. 1, para. 12.

[10] Ibid., para. 13.

[11] Ibid., para. 23.

[12] A/64/40 (Vol. I), para. 118.

and indirect discrimination,[13] and notes that the Convention does not create any new rights, but rather clarifies existing rights to ensure that they can be effectively and practically exercised by persons with disabilities.[14] This position is supported by the references to the other core international human rights treaties contained within the Convention's preamble. Article 5 of the Convention should therefore be interpreted consistently with the established approach in international law that legitimate differential treatment will not constitute discrimination. Although States parties have a legal obligation to take steps to respect, protect, promote and fulfil the right to non-discrimination under the core international human rights treaties, this should not be understood as requiring identical treatment of all persons in all circumstances.[15] Instead, the international law of non-discrimination protects substantive equality and not mere formal equality.[16] The State party argues that the provisions of the Juries Act constitute legitimate differential treatment of all people who require the assistance of another person to understand legal proceedings and is aimed at the legitimate purpose of ensuring a fair trial for the accused. It considers that such differential treatment is reasonable and proportionate, because the law and practice in Western Australia facilitates the performance of jury duty by persons with hearing impairments whenever possible. The restriction is limited to situations in which a person's impairment renders them unable to serve effectively as a juror and where the court is unable to provide the necessary means of enabling the person to serve effectively as a juror.[17]

4.7 Moreover, the State party argues that the provision of an Auslan interpreter cannot be qualified as reasonable accommodation under article 5 (3) of the Convention. It recalls the definition of reasonable accommodation set out in article 2 of the Convention and submits that States parties enjoy a certain margin of appreciation when assessing the reasonableness and proportionality of accommodation measures.[18] In this regard, it notes that the term "serving effectively" should be interpreted according to its natural and ordinary meaning, encompassing an individual's ability to: (a) take in the evidence and addresses by the parties and court; (b) assess the reliability of witnesses; and (c) communicate with other members of the jury during deliberations. This must be determined on a case-by-case basis. Where an interpreter is required, this presents a significant impact on the cost, complexity and duration of the trials, while also interfering with the secrecy of jury deliberations.[19] The provision of an Auslan interpreter for a juror may not be feasible as a case may feature non-verbal audio evidence that would be difficult for an interpreter to convey or the case may be scheduled for many weeks, making access to the requisite numbers of interpreters impractical. The State party refers to an ongoing three-year study led by the University of New South Wales on the participation of deaf citizens as jurors in the Australian legal system. The study is composed of an ethnographic study in the United States of America and a mock trial in Australia. In its preliminary findings, the study notes that there is a significant cost involved in having interpreters (approximately US$ 300,000 annually, including US$ 100,000 for American Sign Language interpreting), for a typical situation of having one deaf juror per month participating in the jury selection process.[20] It also identified the need for significant pretrial preparation, such as the need to agree upon the rendering of technical language by the lawyers and interpreters and to provide training

[13] As an example, see Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 10.

[14] A/HRC/10/48, para. 33.

[15] W.A. McKean, "The meaning of discrimination in international and municipal law", in *British Year Book of International Law 1970*, Humphrey Waldock and R.Y. Jennings, eds. (London, Oxford University Press, 1971).

[16] As examples, see *Settlers of German Origin in Poland, Advisory Opinion, 1923 P.C.I.J. (ser. B) No. 6 (Sept. 10)*; *South West Africa, Second Phase, Judgment, I.C.J. Reports 1966*, p. 6; and European Court of Human Rights, *Case "relating to certain aspects of the laws on the use of language in education in Belgium" v. Belgium*, Decision, 23 July 1968.

[17] Juries Act, section 34G (2).

[18] *Jungelin v. Sweden* (CRPD/C/12/D/5/2011), para. 10.5.

[19] *Re Osman*, 1995, 1 WLR 1327.

[20] University of New South Wales, "Participation in the administration of justice: deaf citizens as jurors – ARC Linkage Project 120200261", project update No. 4, September 2015, p. 2. The study also notes that due to the workload, two interpreters are required for each deaf juror.

to the bench, jury and lawyers.[21] Moreover, the study noted that "interpreters and deaf interviewees also agreed that deaf people should not be given carte blanche permission to serve as jurors, as some trials may be more appropriate than others".[22] The State party is of the view that under the policy and law in Western Australia, reasonable accommodation is provided in accordance with article 5 (3) of the Convention through the hearing loop devices in courtrooms. The State party re-emphasizes that the overriding necessity in criminal proceedings is to afford a fair trial and that this foundational right must prevail over those of the potential juror. It therefore considers that the author's claims under article 5 are without merit.

4.8 If the Committee were to hold that jury duty falls within the intended scope of article 12 of the Convention, the State party submits that the provision of an Auslan interpreter is outside the action required by article 12 (3). The State party recalls that article 12 requires States parties to take "appropriate measures", but not all measures. The Committee's views and the *travaux préparatoires* of the Convention indicate that assistance should be provided to the extent possible for States parties given resource limitations and that the assistance should be proportional to ensure that persons with disabilities are able to make their own decisions as much as possible. The State party acknowledges that whenever it is feasible to put in place accommodation that is not prohibitive in terms of cost or efficiency, and that does not affect the secrecy of jury deliberations, the authorities take the relevant measures, such as the use of hearing loop devices. In the present case, the State party considered the author's needs but concluded that the provision of an Auslan interpreter was not an "appropriate measure" given the overriding necessity to ensure a fair trial. The author's claims under article 12 are therefore without merit.

4.9 The State party further submits that article 21 of the Convention is not engaged on the facts of the case, as it does not provide the author with an entitlement to form part of a jury panel given that jury duty does not constitute an official interaction under article 21 (b). The State party agrees that Auslan is a form of communication in accordance with article 2 and falls within the scope of article 21. However, the obligation of "accepting and facilitating" relates to the provision by States parties of information using means, modes and formats of communication accessible to persons with disabilities, and was intended to address an issue whereby public authorities were not accepting these modes and means. This is also supported by the *travaux préparatoires*, and by the content of article 21 (c) and (d). Additionally, the phrase "official interactions" refers to the accessibility of information and documents provided by States parties to the public. At one point in the negotiations, the phrase "official interactions" was taken to refer to dealings or interactions with official actors, such as meeting or corresponding with government officials, and providing interpretation in courts. The State party considers that even if article 21 encompassed obligations to provide interpretation in courts, the corresponding obligation would be limited to individuals who officially came before the courts and would not extend to provision for jury duty. As for the obligation under article 21 (b), the State party submits that it must be fulfilled in the light of the resource limitations of States parties. The *travaux préparatoires* indicate that the expression "appropriate measures" operates as a qualification to the obligation of States parties and that article 21 (b) therefore does not create an absolute obligation.[23] The State party submits that the State of Western Australia

[21] University of New South Wales, "Participation in the administration of justice: deaf citizens as jurors – ARC Linkage Project 120200261", project update No. 3, June 2015, p. 2.

[22] In relation to the findings of the mock trial, the State party does not mention the positive findings of this study. For example, it highlighted that the percentage of overall time taken by each juror, along with the number of juror turns, suggests that the deaf juror was an active participant in the jury deliberation process. According to quotes from jurors during the mock trial study, hearing jurors generally agreed that the deaf juror: "had greater attention to detail than most of us" and that "it was obvious that the information that the deaf juror had was the same as the information that [they had] had. They were asking the same questions and putting forward the same points and so it seemed very clear that they were getting a good view of the information, as good a view of the information as we seemed to." Additionally, the study stated that the perception of other jurors was that the interpreters did not get involved at all.

[23] See United Nations, Department of Economic and Social Affairs, Ad Hoc Committee, "Daily summary of discussion at the fifth session, 1 February 2005", morning session.

has satisfied this standard through the provision of hearing loops in courtrooms, and that the author's claims under article 21 are therefore without merit.

Author's comments on the State party's observations on admissibility and the merits

5.1 On 19 December 2016, the author reiterated her arguments under her initial submission but did not add further comments in response to the observations of the State party.

B. Committee's consideration of admissibility and the merits

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with article 2 of the Optional Protocol and rule 65 of its rules of procedure, whether it is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 2 (c) of the Optional Protocol, that the same matter has not already been examined by the Committee and nor has it been or is it being examined under another procedure of international investigation or settlement.

6.3 As regards the author's claims under article 12 of the Convention, the Committee notes the State party's submission that they should be held inadmissible *ratione materiae* as jury duty does not represent a manifestation of legal capacity. The Committee recalls its general comment No. 1 (2014) on equal recognition before the law, according to which legal capacity includes the capacity to be both a holder of rights and an actor under the law: legal capacity to be a holder of rights entitles a person to full protection of his or her rights by the legal system, and legal capacity to act under the law recognizes that person as an agent with the power to engage in transactions and to create, modify or end legal relationships.[24] In the present case, the Committee notes the author's claim that the manager's refusal to provide her with Auslan interpretation amounted to a violation of her right under article 12 to enjoy legal capacity on an equal basis with others. The Committee also notes that the manager expressly explained to the author that the authorities did not consider deaf jurors to be a burden for the administration of justice and that the State party did not at any time question the author's legal capacity to perform jury duty.[25] Accordingly, the Committee concludes that the author's claims are inadmissible under article 2 (b) of the Optional Protocol.

6.4 The Committee further notes that the State party has raised no objections to the admissibility of the author's claims under articles 5 and 21 of the Convention. Accordingly, the Committee declares those parts of the communication admissible and proceeds with its examination of the merits.

Consideration of the merits

7.1 The Committee has considered the case in the light of all the information submitted to it by the parties, in accordance with article 5 of the Optional Protocol and rule 73 (1) of its rules of procedure.

7.2 The Committee notes the author's claim that the State party has violated article 5 (2) and (3) of the Convention since, by refusing to provide her with an Auslan interpreter, it failed to provide the reasonable accommodation that she needed to perform her jury duty, which resulted in discrimination on the basis of her hearing impairment. The Committee also notes the State party's submissions: (a) that there has been no violation of the author's rights under article 5, as the pertinent national law is not discriminatory and the differential treatment provided for in the Jury Act is legitimate; and (b) that the provision of an Auslan interpreter to enable the author to perform jury duty would not be reasonable accommodation in the circumstances of the case.

[24] General comment No. 1, para. 12.

[25] *Beasley v. Australia* (CRPD/C/15/D/11/2013), para. 7.6.

7.3 The definition of discrimination on the basis of disability in article 2 of the Convention explicitly states that "it includes all forms of discrimination, including denial of reasonable accommodation". In the present case, the author was summoned by the Department of the Attorney General in Perth to attend jury service in the District Court. The Committee notes that the author informed the Department of the Attorney General that she was willing to perform her jury duty, but that she would require an Auslan interpreter. When the manager of jury services asked her whether she needed an Auslan interpreter or a suitable hearing aid device, the author replied that she did not wear any technological device and confirmed that she would require an Auslan interpreter. The author was then informed by the manager that given the requirements of the Juries Act and the overriding necessity to afford a fair trial to the accused, including the preservation of the secrecy of jury deliberations, the court was unable to provide the author with an Auslan interpreter. She was therefore excluded from jury duty under domestic legislation for not being capable of serving effectively as a juror. In that regard, the Committee recalls that discrimination can result from the discriminatory effect of a rule or measure that is neutral at face value or without intent to discriminate, but that disproportionately affects persons with disabilities.[26] Under article 5 (2), States parties must prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds, and under article 5 (3), States parties must take all appropriate steps to ensure that reasonable accommodation is provided to promote equality and eliminate discrimination.

7.4 In that connection, the Committee further recalls that under article 2 of the Convention, "reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.[27] The Committee considers that, when assessing the reasonableness and proportionality of accommodation measures, States parties enjoy a certain margin of appreciation.[28] However, the courts of States parties must ensure that that assessment is conducted thoroughly and objectively, covering all the pertinent elements, before concluding that the support and adaptation measures would constitute a disproportionate or undue burden.[29]

7.5 In the present case, the Committee observes that the adjustments provided by the State party for persons with hearing impairments would not enable the author to participate in a jury on an equal basis with others. In this connection, the Committee notes the argument of the State party that under its policy and law, reasonable accommodation is provided for people with hearing impairments through hearing loop devices in courtrooms. However, it considers that this accommodation would not enable the author to access complete communication during her service as a juror. The Committee also notes the State party's argument that the use of Auslan interpreters has an impact on the cost, complexity and duration of trials. It also notes that the State party provides the Committee with an estimation of the costs involved in having interpreters (approximately US$ 300,000 annually, including US$ 100,000 for American Sign Language interpreting), reflecting the preliminary findings of an ongoing study on deaf jurors.[30] Nonetheless, the State party does not provide the estimated cost of such accommodation in the individual case of the author, or any data to justify the claim that the requested accommodation is disproportionate or constitutes an undue burden in the specific circumstances of the case. In the same way, the State party failed to analyse the "reasonableness" of the accommodation requested for the author, which refers to its relevance, appropriateness and effectiveness.[31] In this connection, the Committee notes that the provision of Auslan interpretation is a common

[26] *S.C. v. Brazil* (CRPD/C/12/D/10/2013), para. 6.4.

[27] *Jungelin v. Sweden*, para. 10.4.

[28] Ibid., para. 10.5.

[29] Ibid., para. 10.6.

[30] University of New South Wales, "Participation in the administration of justice: deaf citizens as jurors".

[31] General comment No. 6 (2018) on equality and non-discrimination, para. 25 (a).

accommodation, used by Australian deaf persons in their daily life,[32] and that the author indicated to the State party's authorities how to book Auslan interpreters when she informed them about her hearing impairment (see para. 2.1 above). The Committee therefore considers that the State party's arguments are not sufficient to conclude that providing the author with Auslan interpretation would have amounted to a disproportionate or undue burden. Further, while the confidentiality principle of jury deliberations must be observed, the State party does not provide any argument justifying that no adjustment, such as a special oath before a court, could be made to enable Auslan interpreters to perform their functions without affecting the confidentiality of the jury's deliberations. On the basis of the information before it, the Committee considers that the State party has not taken the necessary steps to ensure reasonable accommodation for the author and concludes that the refusal to provide Auslan interpretation, without thoroughly assessing whether that would constitute a disproportionate or undue burden, amounts to discrimination on the basis of disability, in violation of the author's rights under article 5 (2) and (3) of the Convention.

7.6 As to the author's contention that the State party violated its obligations under article 21 by failing to provide her with an Auslan interpreter to ensure that she could exercise her right to freedom of expression and opinion, the Committee notes the State party's argument that this provision is not engaged on the facts of the case, as it does not provide an entitlement to form part of a jury panel given that jury duty does not constitute an official interaction under article 21 (b) of the Convention.

7.7 In this connection, the Committee recalls that, pursuant to article 21 (b) of the Convention, States parties must take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication by accepting and facilitating the use of all accessible means, modes and formats of communication by persons with disabilities in official interactions. Additionally, article 21 (e) of the Convention stipulates that such appropriate measures include recognizing and promoting the use of sign languages. The Committee further recalls that, according to article 2 of the Convention, "communication" includes languages and alternative modes, means and formats of communication, obviously encompassing Auslan interpretation.[33] In that context, the Committee considers that a juror is a person holding a public responsibility in the administration of justice in interaction with others, including other jurors and judicial officers, and that such interaction constitutes "official interactions" within the meaning of article 21. In view thereof, the Committee considers that the refusal to provide the author with the format of communication that she needed to enable her to perform jury duty, and therefore to express herself in official interactions, amounted to a violation of article 21 (b) and (e) of the Convention.

C. Conclusion and recommendations

8. The Committee, acting under article 5 of the Optional Protocol, is of the view that the State party has failed to fulfil its obligations under articles 5 (2) and (3) and 21 (b) and (e) of the Convention. The Committee therefore makes the following recommendations to the State party:

(a) Concerning the author, the State party is under an obligation to:

(i) Provide her with an effective remedy, including reimbursement of any legal costs incurred by her and compensation;

(ii) Enable her to perform jury duty, providing her with reasonable accommodation in the form of Auslan interpretation in a manner that respects the confidentiality of proceedings at all stages of jury selection and court proceedings;

[32] University of New South Wales, "Participation in the administration of justice: deaf citizens as jurors".

[33] *Beasley v. Australia*, para. 8.8, and *Lockrey v. Australia* (CRPD/C/15/D/13/2013), para. 8.8.

(b) In general, the State party is under an obligation to take measures to prevent similar violations in the future. In that regard, the Committee requires the State party to:

(i) Ensure that every time a person with disabilities is summoned to perform jury duty, a thorough, objective and comprehensive assessment of his/her request for adjustment is conducted and all reasonable accommodation is duly provided to enable his or her full participation;

(ii) Adopt the necessary amendments to the relevant laws, regulations, policies and programmes, in close consultation with persons with disabilities and their representative organizations;

(iii) Ensure that appropriate and regular training on the scope of the Convention and the Optional Protocol, including on accessibility for persons with disabilities, is provided to local authorities and the judicial officers and staff involved in facilitating the work of the judiciary, such as the manager of jury services.

9. In accordance with article 5 of the Optional Protocol and rule 75 of the Committee's rules of procedure, the State party should submit to the Committee, within six months, a written response, including information on any action taken in the light of the present Views and recommendations of the Committee. The State party is also requested to publish the Committee's Views and have them widely disseminated, in accessible formats, in order to reach all sections of the population.